IN THE

Supreme Court of the United States

OCTOBER TERM, 1947
No. 178-183

In the Matter of THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, *Debtor.*	
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, etc., et al., *Petitioners,* vs. J. HAMILTON CHESTON, et al., etc., *Respondents.*	No. 9203
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, etc., et al., *Petitioners,* vs. METROPOLITAN LIFE INSURANCE COMPANY, *Respondent.*	No. 9204
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, etc., et al., *Petitioners,* vs. CENTRAL HANOVER BANK AND TRUST COMPANY, et al., as Trustees, etc., *Respondents.*	No. 9205
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, etc., et al., *Petitioners,* vs. THE NATIONAL CITY BANK OF NEW YORK, as Trustee, etc., *Respondent.*	No. 9206
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, etc., et al., *Petitioners,* vs. JOHN C. TRAPHAGEN, et al., etc., *Respondents.*	No. 9207
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, etc., et al., *Petitioners,* vs. JAMES G. BLAINE, et al., etc., *Respondents.*	No. 9208

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The petitioner is the Committee for the Preferred Stock of The Chicago, Rock Island and Pacific Railway

Company which seeks review of the decision of the Circuit Court of Appeals for the Seventh Circuit directing the United States District Court in Chicago to confirm the Section 77 reorganization plan heretofore approved. The contentions made by this petitioner parallel and overlap those made by the Debtor in its petition to this Court (No. 184-189) for a writ of certiorari to review the same decision of the Circuit Court of Appeals. In order to avoid duplication of briefs, the respondents have answered the contentions of the Debtor and of the Preferred Stock Committee in one brief submitted in opposition to the Debtor's petition. A copy of that brief is attached hereto.

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

Respectfully submitted,

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August 8, 1947.

Supreme Court of the United States

In the Matter
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THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *Debtor-Petitioner,*

v.

METROPOLITAN LIFE INSURANCE COMPANY, as remaining member of the First and Refunding Group, CENTRAL HANOVER BANK AND TRUST COMPANY, et al., as Trustees, THE NATIONAL CITY BANK OF NEW YORK, as Trustee, J. HAMILTON CHESTON, et al., JOHN C. TRAPHAGEN, et al., JAMES G. BLAINE, et al., *Respondents.*

OCTOBER TERM, 1947

No. 184-189

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August 8, 1947.

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The respondents are the Protective Committee for The Chicago, Rock Island & Pacific Railway Company General Mortgage Bonds; the Trustees under The Chicago, Rock Island & Pacific Railway Company General Mortgage;

Metropolitan Life Insurance Company, as remaining member of the First and Refunding Group; the surviving Trustee under The Chicago, Rock Island & Pacific Railway Company First and Refunding Mortgage; the Trustee for the Secured 4½% Bonds, Series A, of The Chicago, Rock Island & Pacific Railway Company; the Protective Committee for the First Mortgage 4½% Bonds of the Rock Island, Arkansas and Louisiana Railroad Company; and the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Bonds and Choctaw and Memphis Railroad Company First Mortgage 5% Bonds.

This opposing brief is submitted under the number and title of the Debtor's application for certiorari. However, two additional petitions for certiorari have been filed seeking to review the same decision of the Circuit Court of Appeals,—one by the Preferred Stock Committee (No. 178-183) and the other by Gerald Axelrod, *et al.*, holders of unsecured Convertible Bonds (No. 190-193). The contentions made in the three petitions overlap, and to avoid duplication of opposing briefs the present brief will deal with all three petitions.

Two of the petitioners, the Preferred Stock Committee and the Debtor, have no real interest in the proceeding. The Interstate Commerce Commission found that the old stock had no value and in this was sustained by the District Court and the Circuit Court of Appeals when they approved the Plan, with petitions for writs of certiorari being denied by this Court. Consequently, the plan was never submitted to the stock interests for vote and they had no standing to appear in connection with confirmation in the courts below where the only issue was whether there had been justification for rejection of the plan by any class of creditors.

The third petitioner, a group of individual holders of a comparatively small but unspecified number of unsecured

Convertible Bonds, is not really representative of such bonds which have been represented in the proceeding by the Chase National Bank as Trustee under the Indenture for such bonds. Attorneys for this petitioner have pursued such an obstructive course throughout the proceeding that the Commission held that they had not made any contribution to the plan and refused them any allowance for fees or expenses (252 I. C. C. 209, 256-7; 254 I. C. C. 858). Their present petition and brief, like their previous briefs, is full of misstatements, misuses of figures and irrelevancies.

Opinions Below.

The first plan approved by the Interstate Commerce Commission resulted in numerous objections, which were passed upon by the District Court in *In re Chicago, Rock Island & Pacific Ry. Co.* (D. C. N. D. Ill. E. D. 1943), 50 F. Supp. 835. The District Court overruled most of the objections but sustained two and remanded the plan to the Commission, suggesting certain changes in addition to those necessary to meet the objections which it had sustained.

The modified plan, approved by the Commission on May 1, 1944, was approved by the District Court in an opinion dated May 14, 1945. *In re Chicago, Rock Island & Pacific Ry. Co.*, 67 F. Supp. 547. Appeals were taken to the Circuit Court of Appeals which affirmed the order of approval in *The Chicago, Rock Island & Pacific Ry. Co.* v. *Fleming* (C. C. A. 7, 1946), 157 F. (2d) 241.

Petitions for writs of certiorari were filed by the same three petitioners who filed the petitions now before this Court, and all were denied. *The Chicago, Rock Island & Pacific Ry. Co.* v. *Fleming* (1946), 329 U. S. 780; *Harrison* v. *Fleming* (1946), 329 U. S. 780; *Axelrod* v. *Fleming* (1947), 329 U. S. 811.

After the submission of the plan by the Commission to the creditors for acceptance or rejection, the District Court refused to confirm the plan, and directed that it be remanded to the Commission, in an opinion which is not reported but will be found in the printed record (R. 249-253). Appeals were then taken by the respondents to the Circuit Court of Appeals which reversed the order of the District Court and directed the District Court to confirm the plan. *In re Chicago, Rock Island & Pacific Ry. Co.* (C. C. A. 7, 1947), 160 F. (2d) 942. The Debtor's petition and the companion petitions of the Preferred Stock Committee and of Gerald Axelrod *et al.* are for writs of certiorari to review the order of the Circuit Court of Appeals directing the District Court to confirm the plan.

The companion petition of Gerald Axelrod *et al.* refers to other steps in the reorganization proceedings in connection with which opinions have been filed:

Aaron Colnon, the Co-Trustee appointed by District Judge Igoe, filed a petition on September 30, 1946, asking for authority to carry out what was "a new plan for the partial reorganization of the debtor", as the Circuit Court of Appeals later ruled. This "new plan" had never been before the Interstate Commerce Commission as required by Section 77. Mr. Colnon's petition is attached to the copy of the statement of Mr. Colnon which has been filed in this Court by Gerald Axelrod *et al.* and which is referred to in their brief at page 44. On November 22, 1946, District Judge Igoe handed down an order "which in substance approved a new plan for the partial reorganization of the debtor and authorized the initial steps toward the consummation of the new plan." This characterization of the order is taken from the opinion of the Circuit Court of Appeals, which reversed the order. *In re Chicago, Rock Island & Pacific Ry. Co.* (C. C. A. 7, 1947), 160 F. (2d) 949. Judge Igoe handed down no opinion when he approved Mr. Colnon's new plan.

After the Circuit Court of Appeals had entered its two orders, one directing the District Court to confirm the plan which had been approved by the Commission, by the District Court and by the Circuit Court of Appeals, and the other reversing the District Court's approval of Mr. Colnon's new plan, Judge IGOE undertook to change the Commission's plan before confirming it so that the District Judge would have the power to name a majority of the reorganization managers. Under the plan a majority of the reorganization managers can, among other things, name the members of the first board of directors. Judge IGOE's opinion of May 23, 1947, not reported, and his so-called "Order Confirming Plan of Reorganization" of the same date can be found in the brief of the petitioners Gerald Axelrod *et al.* at pages 64-78. The present respondents filed a petition with the Circuit Court of Appeals for a writ of mandamus directing the District Court to carry out the mandate of the Circuit Court of Appeals and confirm the plan without change, and, after argument, the Circuit Court of Appeals granted the writ and rendered an opinion, not yet reported, a copy of which can be found at pages 79-82 of the brief of the petitioners Gerald Axelrod *et al.*

JURISDICTION.

Petitioners invoke the jurisdiction of this Court under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. Sec. 347(a)), and Section 24(c) of the Bankruptcy Act (11 U. S. C. Sec. 47(c)).

QUESTION PRESENTED.

If there can be said to be any question presented by the petition of the Debtor and the companion petitions, it is whether or not a District Court has an unfettered dis-

cretion to refuse to confirm a plan of reorganization, i. e., a personal power, arbitrarily and without regard to the record before the District Court, to remand to the Interstate Commerce Commission a previously approved plan and thus to effect a "blockade" of further reorganization. We submit that there is no basis for the contention that the District Court was vested with an unrestricted personal power to refuse to confirm the plan,—a power not subject to review no matter how arbitrarily exercised.

As a part of this question, petitioners argue that the order of the District Court was not appealable because of the absence from Section 77 itself of any express provision for review. However, orders of the District Court in proceedings under Section 77 of the Bankruptcy Act, whether interlocutory or final, are clearly reviewable under Section 24(a) of the Bankruptcy Act.

STATEMENT OF THE CASE.

A relatively brief statement of the case, together with the opinion which the Circuit Court of Appeals handed down when it directed the District Court to confirm the plan, will be sufficient to establish that none of the three petitions raises any substantial questions for decision by this Court.

Brief History of the Proceeding Prior to the Hearing on Confirmation: On June 7, 1933, more than 14 years ago, this proceeding was commenced with high hopes for reasonably prompt reorganization. Due to a combination of circumstances the hearings before the Interstate Commerce Commission were not commenced until October 6, 1936, and were not concluded until July 27, 1938. In September, 1939, the hearing Examiner issued a proposed report. On October 31, 1940, the Commission issued a report and order approving a plan of reorganization. *Chicago, Rock Island & Pacific Ry. Co. Reorganization,*

242 I. C. C. 298. Petitions for modifications were thereafter filed within the 60-day period allowed by Section 77, and on July 31, 1941, a supplemental report approving an amended and modified plan was issued by the Commission. *Chicago, Rock Island & Pacific Ry. Co. Reorganization,* 247 I. C. C. 533. On October 2, 1941, the Commission issued a report on further consideration to correct "certain errors and inconsistencies in the approved plan which should be eliminated." *Chicago, Rock Island & Pacific Ry. Co. Reorganization,* 249 I. C. C. 297.

Hearings on the objections to the plan were held in the District Court in October, 1941. But the decisions of the Circuit Courts of Appeals in the *Western Pacific* and *Milwaukee* cases and this Court's allowance of writs of certiorari to review those decisions resulted in a suspension of further proceedings in connection with the plan until this Court handed down its opinions in *Ecker* v. *Western Pacific Railroad Corp.* (1943), 318 U. S. 448, and *Group of Institutional Investors* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co.* (1943), 318 U. S. 523.

After this Court's opinions in those two cases had been handed down, further briefs were submitted to the District Court and in June, 1943, that Court disapproved the plan and remanded it to the Commission. *In re Chicago, Rock Island & Pacific Ry. Co.,* 50 F. Supp. 835. While the District Court disapproved the Commission's plan, it overruled most of the very large number of objections which had been filed thereto and sustained only two—one relating to the treatment of the underlying General Mortgage Bonds, which was disapproved in the light of this Court's opinion in the *Milwaukee* case, and the other relating to the ratification of the nominations of reorganization managers. In addition, however, the District Court pointed out that the large accumulations of earnings would permit the Commission to provide for (1) a large cash distribution, (2)

the elimination of any provision for the sale of new first mortgage bonds to raise cash, and (3) the distribution to the creditors of an additional amount of first mortgage bonds equal to those which would have been sold under the plan previously approved by the Commission.

A further hearing was held by the Commission in September, 1943, and on January 3, 1944, the Commission issued a further report and order approving an amended and modified plan. *Chicago, Rock Island & Pacific Ry Co. Reorganization,* 257 I. C. C. 265. Petitions for further modifications were then filed within the 60-day period allowed by the statute, and on May 1, 1944, the Commission issued its final order modifying in minor respects the plan which had been approved on January 3, 1944. *Chicago, Rock Island & Pacific Ry. Co. Reorganization,* 257 I. C. C. 307.

At the hearing in September, 1943, and in the briefs filed with the Commission prior to the reports of January 3, 1944, and May 1, 1944, substantially all the contentions now advanced by the petitioners were urged before the Commission. One of the contentions now made by the Debtor and by the other petitioners is that the Commission failed to consider alleged changed circumstances, the accumulation of war earnings, etc. As we will point out in more detail below, (1) the Commission made drastic changes in the plan which it had previously approved, so as to recognize the accumulation of war earnings, providing for a cash distribution of $38,011,922 and for the distribution to the creditors of $11,000,000 of First Mortgage Bonds which were to be sold for new money under the original plan, and (2) as clearly appears from the passages in the reports of the Commission which were later quoted by the Circuit Court of Appeals (R. 341-342), the Commission considered whether the war earnings justified a permanent increase in the capital structure and decided that they did not.

After the Commission's order of May 1, 1944, had been certified to the District Court, a hearing was held on the objections to the approval of the plan on June 23, 1944. A long period then elapsed before the District Court passed upon the objections. In the meantime the District Court ordered that the claim of the Reconstruction Finance Corporation be paid. Subsequently on May 14, 1945, the District Court filed its opinion approving the plan, and on June 15, 1945, an order approving the plan was entered. *In re Chicago, Rock Island & Pacific Ry. Co.*, 67 F. Supp. 547.

Appeals were immediately taken to the Circuit Court of Appeals by the three present petitioners. While the necessary steps were being taken in connection with those appeals, the Commission submitted the plan to the creditors for acceptance or rejection pursuant to the provisions of Section 77 of the Bankruptcy Act.

The results of the submission were certified by the Commission to the District Court on February 28, 1946. The certification disclosed that the holders of the mortgage bond issues (other than the Little Rock and Hot Springs Western First Mortgage Bonds) who voted on the approved plan voted to accept it as follows (R. 93-104):

General Mortgage Bonds	94.89%
First and Refunding Mortgage Bonds	97.70%
Secured 4½% Bonds, Series A	98.17%
Burlington, Cedar Rapids & Northern Railroad Company Consolidated Mortgage Bonds	96.11%
Choctaw, Oklahoma & Gulf Railroad Company Consolidated Mortgage Bonds	97.90%
Rock Island, Arkansas and Louisiana Railroad Company First Mortgage Bonds	96.72%
St. Paul and Kansas City Short Line Railroad Company First Mortgage Bonds	97.71%

A majority in amount of those voting in two classes, the holders of the Little Rock and Hot Springs Western First Mortgage Bonds and the holders of the unsecured Convertible Bonds, voted to reject the plan.

It may be noted at this point that no representative of any holder of the Little Rock and Hot Springs Western First Mortgage Bonds later objected to the confirmation of the plan and that the District Court's refusal to confirm the plan was not based on the vote of the holders of the Little Rock and Hot Springs Western First Mortgage Bonds.

The appeals from the District Court order approving the plan were not argued in the Circuit Court of Appeals until April 11, 1946. Consequently the results of the submission, as certified by the Commission on February 28, 1946, were forcefully brought to the attention of the Circuit Court of Appeals in the briefs and on the argument.

On May 23, 1946, the Circuit Court of Appeals unanimously affirmed the District Court's approval of the plan. *The Chicago, Rock Island & Pacific Ry. Co.* v. *Fleming*, 157 F. (2d) 241.

Three petitions for writs of certiorari to review the order of the Circuit Court of Appeals were then filed with this Court by the present three petitioners. The contentions now advanced by the petitioners were presented to this Court in those petitions (except only the contention which is now made that the District Court's refusal to confirm could not be reviewed on appeal). All three petitions were denied, two on November 18, 1946, and the third on February 3, 1947. *The Chicago, Rock Island & Pacific Ry Co.* v. *Fleming* (1946), 329 U. S. 780; *Harrison* v. *Fleming* (1946), 329 U. S. 780; *Axelrod* v. *Fleming* (1947), 329 U. S. 811.

The District Court's Refusal to Confirm the Plan: Considerably before the argument in the Circuit Court of

Appeals with respect to the approval of the plan, the District Court had ordered a hearing on the confirmation of the plan. However, requests for adjournment were made and by a succession of orders the confirmation hearing was adjourned until June 11, 1946.

The reasons urged for these adjournments were that (R. 138):

1. The District Court should await the outcome of the appeals to the Circuit Court of Appeals from the District Court's order approving the plan.

2. The District Court should await the decision of this Court in *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western Railroad Company.*

3. The District Court should await legislation by Congress affecting railroad reorganizations.*

The Circuit Court of Appeals affirmed the approval of the plan on May 23, 1946. The confirmation hearing was held on June 11, 1946, as already noted. This Court's opinion in *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western Railroad Company,* 328 U. S. 495, was handed down on June 10, 1946 and copies were available in Chicago at the time of the hearing on June 11, 1946 and briefs on the objections to the confirmation were filed in which this Court's opinion in the *Denver* case was fully discussed. However, on June 28, 1946, the District Court handed down an opinion and order refusing to confirm the plan and referring the case back to the Interstate Commerce Commission (R. 249-255).

The District Court's opinion is an extraordinary document.

Although the hearing on the confirmation had been deferred over three months and the reasons given were

* This Court's two opinions in the *Denver* case disclose that it is familiar with developments in Congress relating to railroad reorganization legislation. A bill, S.1253, was passed by both houses of Congress on or about August 3, 1946, and disapproved by the President on or about August 13, 1946. No further legislation has thus far been passed.

that the District Court should have the benefit of the opinion of the Circuit Court of Appeals on the appeals relating to the approval of the plan and of this Court's opinion in the *Denver* case, the District Court did not so much as mention either of those opinions and its rulings were made in the teeth of both of them.

Much the largest part of the opinion was devoted to a discussion of what was taking place in Congress and what was being said about railroad reorganizations (R. 250-252, 253). The District Court based its decision primarily on Congressional comments despite the explicit statement on that subject in this Court's opinion in *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western Railroad Company,* 328 U. S. 495, 509-511, the gist of which is that it is the duty of the courts to enforce the statutes as they are, not to base their decisions on possibilities of future legislation. This Court's statement on the subject was quoted fully to the District Court in the joint brief filed on behalf of those who were urging confirmation of the plan but apparently no attention whatever was paid to it.

In a comparatively short passage (R. 252), which the Debtor has quoted in its petition (p. 4), the District Court purported to refer to the factual situation. However, as the Circuit Court of Appeals later pointed out in its opinion (R. 334-335, footnote 1):

> "In his [the District Court's] opinion, no distinction was made between developments which took place prior to the approval of the plan by the Commission on May 1, 1944, or the District Court on June 15, 1945, and developments which took place after one or both of those dates * * *."

Indeed, as we shall point out later, all of the developments of any importance to which the District Court referred took place prior to the approval of the plan.

The District Court's order was also extraordinary, not only in that it constituted a refusal to confirm the plan, but because it contained an express finding that the plan "does not make adequate provision for fair and equitable treatment for the interests or claims of the holders of the Convertible Bonds" (R. 254). This holding was, of course, the exact reverse of the holding which the District Court had previously made in approving the plan, and which the Circuit Court of Appeals had affirmed unanimously. Furthermore, in approving the plan the District Court had discussed the objections of the group of Convertible Bondholders in some detail and had overruled them, *In re Chicago, Rock Island & Pacific Ry. Co.* (1945), 67 F. Supp. 547, 551, and they had been discussed in the opinion of the Circuit Court of Appeals affirming the District Court's approval of the plan. *The Chicago, Rock Island & Pacific Ry. Co.* v. *Fleming* (1946), 157 F. (2d) 241, 249-250. Yet the District Court's opinion refusing to confirm the plan did not so much as mention the Convertible Bonds except in a general statement (R. 253) that the Court was "holding out hope to the junior creditors" but that "it would be vain for the junior creditors to expect to be made whole."

The Appeals to the Circuit Court of Appeals and Other Developments: The present respondents immediately appealed to the Circuit Court of Appeals from the District Court's refusal to confirm the plan and the appeals were brought on as promptly as possible. However, they could not be heard until January 30, 1947.

In the meantime Co-Trustee Colnon brought on the petition, already mentioned, a copy of which is attached to Mr. Colnon's statement filed by the petitioners Gerald Axelrod *et al.* and referred to in their brief at page 44. As will be seen from Mr. Colnon's petition, he proposed an entirely new plan, contemplating that to a very large extent it would be carried out by the District Court quite

independently of the Interstate Commerce Commission by buying in mortgage bonds and effecting various exchanges of securities and that thereafter the balance of the plan would be sanctioned by the Interstate Commerce Commission. Mr. Colnon's proposal contains so many illegal and inequitable features that it seems superfluous to stress any of them, but it will be observed from page 4 of his statement that, while the Commission approved a total bonded indebtedness of $110,917,060, Mr. Colnon proposed a total bonded indebtedness of $210,406,000. His whole plan and all his assertions as to the fairness of his plan—untenable as they were for many other reasons—were predicated on a mere assumption that the Commission would adopt the capital structure which he proposed.

On November 22, 1946, after hearing the opposition to Mr. Colnon's plan, the District Court entered an order which was later correctly described by the Circuit Court of Appeals: the order "in substance approved a new plan for the partial reorganization of the debtor and authorized the initial steps toward the consummation of the new plan." Appeals were duly taken from the order of November 22, 1946, and the appeals from that order were argued at the same time as the appeals from Judge Igoe's order of June 28, 1946, refusing to confirm the plan.

Because of the importance of the case the Circuit Court of Appeals set the appeals down for argument specially and an entire Court day was devoted to the arguments on January 30, 1947. Much the largest part of the time taken on the arguments was devoted to the appeals from the order relating to the confirmation of the plan, to which the pending petitions for certiorari relate.

The appellants—the present respondents—contended that Judge Igoe had utterly ignored the applicable rules of law in passing on the question of confirmation; that

those rules of law as applied to the facts in the record required that the plan be confirmed; and that the Circuit Court of Appeals should reverse Judge IGOE's arbitrary action and direct him to confirm the plan.

On February 21, 1947, the Circuit Court of Appeals handed down two opinions reversing the two orders appealed from. Petitions for rehearing were subsequently filed and were denied on April 7, 1947.

Unlike the opinion of the District Court, the opinion of the Circuit Court of Appeals discussed the facts carefully and accurately, leading to a judicial conclusion based on the facts and applicable rules of law as laid down by this Court in *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western Railroad Company* (1946), 328 U. S. 495. Reference will be made later to particular subjects dealt with in the opinion. A reading of the opinion, however, will demonstrate that all of the parties received the benefit of the kind of judicial decision to which they were entitled—an application of the law to the facts of the case.

Since the petitions relate to the order of the Circuit Court of Appeals directing that the plan be confirmed, developments subsequent to entry of that order are hardly relevant. But they should be mentioned briefly, since they are referred to by the petitioners Gerald Axelrod *et al.*

Instead of confirming the plan, as the Circuit Court of Appeals had directed, Judge IGOE filed an opinion and order on May 23, 1947, by which he undertook to change the plan so as to have the power himself to appoint three of the five reorganization managers. (See brief of Gerald Axelrod *et al.*, p. 64-78.) Since the reorganization managers will name the first Board of Directors, the power to appoint a majority of the reorganization managers is potentially equivalent to the power to name

the original Board of Directors. A petition for a writ of mandamus was filed with the Circuit Court of Appeals by the respondents and, after argument, it was granted and the District Court then eliminated its attempted change in the plan (*id.* 79-82).

Other efforts to defeat the plan which took place during the period subsequent to the Circuit Court of Appeals, order of February 21, 1947 are, with one exception, not disclosed by the record in this Court. The exception is the statement submitted by Mr. Colnon, Co-Trustee appointed by Judge IGOE, before a subcommittee of the Senate Committee on Interstate and Foreign Commerce, which has been filed by Gerald Axelrod *et al.* It is unnecessary to discuss that statement except to say that a mere reading of it will show that Mr. Colnon (acting independently of the Senior Trustee, who was appointed by the Judge administering the case before Judge IGOE took over the administration, from a panel named by the Interstate Commerce Commission) sponsored a new plan, which was illegal and grossly inequitable and then attempted to support his new plan by baseless charges against those who sought consummation of the approved plan.

ARGUMENT.

I.

THE FACTS OF THIS CASE ARE EXTRAORDINARILY SIMILAR TO THOSE IN *RECONSTRUCTION FINANCE CORPORATION* v. *DENVER & RIO GRANDE RAILROAD COMPANY*, 328 U. S. 495.

The facts of this case are amazingly similar to those in *Reconstruction Finance Corporation* v. *Denver & Rio Grande Railroad Company* (1946), 328 U. S. 495.

In the *Denver* case the senior bondholders voted to accept the plan, as have the senior bondholders in this

case with the exception of the holders of the Little Rock and Hot Springs Western First Mortgage Bonds, whose failure to cast a favorable vote is not significant in view of the absence of any objection to the confirmation of the plan on that ground.

In the *Denver* case 79.33% of the holders of the junior bond issue voting on the plan cast adverse ballots. In this case 75.78% of the holders of the unsecured Convertible Bonds and other unsecured claims who voted cast adverse ballots.

The *Denver* plan was approved by the Commission on June 14, 1943, and called for an "effective date" of January 1, 1943. The Rock Island plan was approved by the Commission on May 1, 1944, and called for an "effective date" of January 1, 1944.

The war earnings of the two railroads preceding and following the approval of the plans were very much greater than the "normal" earnings forecast by the Commission.

In each case the plan was approved by the Commission at a time of extraordinarily large earnings and subsequent earnings declined. This will appear from the following table of their earnings before interest charges, the *Denver* earnings being taken from this Court's opinion (328 U. S. 514, 518) and the Rock Island earnings being taken from the opinion of the Circuit Court of Appeals (R. 339) and from the record (R. 242):

Year	*Denver*	*Rock Island*
1942	$17,044,420	$35,112,693
1943	11,573,668	37,037,708
1944	8,157,880	26,415,919
1945	—	20,444,571

As appears from page 30 of the Debtor's petition, the Rock Island's earnings before interest in 1946 were

$16,578,161, so that in each of the years 1944, 1945 and 1946 there was a substantial decline in earnings from those of the previous year.

In each of the two cases large amounts of cash accumulated in the estate subsequent to the so-called "effective date" of the plan. The principal reasons for the accumulations were (1) the exceptionally large earnings and (2) the failure to pay out any of the earnings as interest on the old securities or to pay interest or dividends on the new securities from the "effective dates" of the respective plans.

In each case some of the accumulated earnings were used to retire debt and the retirement of debt was urged as a ground for a reconsideration of the plan approved by the Commission.

As already noted, this Court's opinion in *Reconstruction Finance Corporation* v. *Denver & Rio Grande Railroad Company,* 328 U. S. 495, was handed down on June 10, 1946, prior to Judge IGOE's refusal to confirm the plan and it was fully briefed in the District Court. Yet Judge IGOE's opinion does not mention the *Denver* opinion and the grounds which he advanced for refusing to confirm the plan were advanced in the teeth of the most explicit rulings by this Court.

II.

THERE ARE FACTORS PRESENT IN THIS CASE WHICH ASSURE THE FAIRNESS OF THE ROCK ISLAND PLAN.

As the Circuit Court of Appeals found in its two opinions, the plan approved by the Commission fails to provide in full for the claims of the mortgage bondholders and the aggregate amount of the deficiencies on the various issues is more than $106,000,000 (157 F. (2d) 241, 246-8;

160 F. (2d) 942, 943).* In addition, unsecured creditors have a deficiency of $39,600,000 (taking new no par common stock at $50 a share) which makes a total creditor deficiency of $145,000,000 which is not provided for in the plan of reorganization.

The claims of the stockholders accordingly were held to be without value by the District Court, the Circuit Court of Appeals affirmed, and this Court refused to review the order of the Circuit Court of Appeals, as already noted.

Furthermore, although Judge IGOE refused to confirm the plan, he said that (p. 253):

> "with the most optimistic approach by the Commission it would be vain for the junior creditors to expect to be made whole."

It follows that even in Judge IGOE's view there was nothing left for the stockholders, if the rule of priorities enunciated by this Court in the *Western Pacific* and *Milwaukee* cases is to be followed.

In view of the enormous amount, over $145,000,000, which would have to be made up before the stockholders could participate, the only possible issues in this case re-

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*This appears from the following table showing the deficiencies in the secured creditors claims which would remain after receipt of the new securities and cash allocated to them under the plan of reorganization (257 I. C. C. at p. 319). The deficiencies are calculated by taking new no par value common stock at $50 per share, the amount which it has been adjudicated by the Commission and the District Court to be worth in determining that the General Mortgage Bonds will have no deficiency under the present plan (257 I. C. C. at pp. 276-83, 310-12; 67 F. Supp. at p. 549).

Secured Claims	Claim at Jan. 1, 1944	Deficiency taking new common at $50
General Mortgage	$ 86,213,400	None
C. & M. First Mortgage	5,286,000	None
First and Ref.	156,870,859(A)	$ 57,606,900
Secured 4½s	59,021,174	18,569,382
C. O. & G.	8,296,867	872,239
St. P. & K. C. S. L.	27,495,118(A)	13,404,485
R. I. A. & L.	16,362,500	5,922,916
B. C. R. & N.	16,912,500	9,539,383
Total	$376,458,418	$105,915,305

(A) Includes bonds now outstanding, formerly pledged for bank loans.

lated to the treatment of the various classes of creditors. And the basis for Judge IGOE's order refusing to confirm the plan was, as stated in his order but not in his opinion, that it did not provide for "fair and equitable treatment for the interests or claims of the holders of the Convertible Bonds" (R. 254).

The original fairness of the plan to the holders of the Convertible Bonds was established by the decision of the District Court approving the plan, by the affirmance of that decision by the Circuit Court of Appeals and by this Court's refusal to grant writs of certiorari. And the Rock Island plan contains a feature which prevents changes in conditions from making an originally fair plan subsequently unfair to the holders of the Convertible Bonds except in one contingency so remote as not to require serious mention.

That feature of the plan is this: under the plan an allotment of new common stock is made to every class of creditors, including the holders of the Convertible Bonds. The allotment of new common stock made to the holders of the Convertible Bonds and other unsecured claims was based on the value, as found by the Commission, of the unmortgaged assets. There was allotted to the unsecured creditors *all* the securities (common stock) to be issued in respect of the unmortgaged assets. The secured creditors did not share in such securities even in respect of their deficiency claims. The allotments of common stock made to the secured creditors were based on the value of the mortgaged assets as found by the Commission. As a result the plan operates automatically to meet any changes in conditions. As the Circuit Court of Appeals said (R. 333-334):

> "Under the plan, out of a total issue of 1,522,672 shares of the common stock, 160,078 shares are allotted to the holders of the Convertible Bonds. The result was to provide for the holders of these bonds a 10.68% interest in the equity of the reorganized

company, and if the plan is consummated, the Convertible bondholders will participate in any larger earnings than the Commission's forecast anticipated."

If the earnings had increased unexpectedly, or if it had proved possible to retire more debt than had been visualized when the plan was approved, the plan would not thereby have become inequitable, since the holders of the Convertible Bonds would receive the benefit through their participation in the common stock allotment. They would receive proportionately greater benefit than secured creditors from subsequent developments favorable to the new common stock equity since their entire recognition is in new common stock, and secured creditors, obtaining most of their recognition in senior securities with limited interest or dividend rights, would have relatively less benefit from developments favorable to the common stock equity. In other words, the unmortgaged assets to which unsecured creditors would have a right to look were at most 5% of the total assets, yet the unsecured creditors, through getting 10% of the Common Stock, receive 10% (not just 5%) of the excess earnings of all the properties over and above the limited amounts needed to service the senior securities.

The only contingency in which the plan could have become unfair would have been the realization of unanticipated earnings so great as to result in actually overpaying one or more classes of secured bonds. It has not been and could not be seriously contended that that has taken place. We have already presented in an earlier footnote herein a table showing that most of the secured classes of creditors have enormous deficiencies which are not to be recognized under the plan, even in face amount of new securities. That table calculated the deficiencies taking new common stock at $50 a share, but there would still be enormous deficiencies if new common stock is taken at $100 a share.

The only petitioners mentioning the subject are Gerald Axelrod, et al., who argue briefly that the holders of the General Mortgage Bonds are overcompensated (p. 50-51). Those petitioners undertake to show that the plan results in over-compensation of the holders of the General Mortgage Bonds but they do so by (1) disregarding the large claim on a General Mortgage Bond for accrued interest to the "effective date" of the plan and thus grossly understating the amount of the claim, and (2) treating the new no par value common stock as if it were allotted at $100 per share, whereas it was allotted at approximately $50 per share, as appears in the petitioners' brief (p. 50).

Later we will show, using market value tables similar to those used in *Insurance Group Committee* v. *Denver & R. G. W. R. Co.* (1947), 329 U. S. 811, that any contention that any of the secured creditors are over-compensated is wholly without substance.

III.

THE REASONS ADVANCED BY THE DISTRICT COURT AND BY THE PETITIONERS WHY THE PLAN SHOULD NOT HAVE BEEN CONFIRMED ARE WHOLLY WITHOUT MERIT.

The Debtor bases its petition on the grounds advanced by Judge Igoe for his refusal to confirm the plan (p. 4), and if the numerous contentions advanced by the other petitioners be analyzed, it will be found that most of them are similar to those urged by the Debtor.

The reasons for Judge Igoe's refusal to confirm the plan, as disclosed by his opinion, fall into two categories.

A. Possibilities of Legislation.

Much the largest part of Judge Igoe's opinion consisted of quotations from statements made in Washington critical of completed and pending plans (R. 249-252, 253).

In the brief filed by the appellants (these respondents) in the Circuit Court of Appeals it was established (p. 28-38) that some of the quoted statements were demonstrably incorrect and that others notably the quotations from certain testimony given by Commissioner Mahaffie of the Interstate Commerce Commission, had been torn from their context. It is unnecessary to make the same showing in this Court, since in *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western Railroad Co.* (1946), 328 U. S. 495, 510-512, this Court said (footnotes omitted):

> "Although the results of reorganizations under the section, as thus construed, have been criticized as unfortunate and changes have been suggested, no different legislation has been enacted. Indeed a different method for reorganization, enacted in 1939 and designed to meet the requirements of railroads not in need of financial reorganization of the characted provided by § 77 but only of an opportunity for voluntary adjustments with their creditors, terminated on July 31, 1940, and a comparable provision made in 1942 was allowed to lapse on November 1, 1945. This situation leaves clear the duty of the agencies of the Government entrusted with the handling of reorganizations under § 77, including this Court, to administer its provisions according to their best understanding of the purposes of Congress as expressed in the words of § 77 read in the light of the contemporaneous discussion in Congress. Changes in economic conditions cannot affect the powers of the reorganization agencies even though such changes may require a re-examination into the present fairness of the former exercise of those powers."

B. Alleged Changed Conditions.

The District Court said in a passage quoted by the Debtor at page 4 (R. 252):

> "In the present case we have a plan that except for slight modifications was prepared by the Com-

mission in 1940 and rests on studies of earnings, etc., going back to 1937 and even beyond.

"Against that we find the Debtor today with cash or equivalent of over $70,000,000; with an R. F. C. loan aggregating, principal and interest in excess of $18,000,000 paid in full; with the entire first mortgage of the Peoria Terminal Co., to all intents and purposes paid in full; with over 20% of the Choctaw & Memphis first mortgage retired; and with an amazing reduction, in the interim, of equipment debt. Three classes of creditors set up in the original plan have disappeared—the banks, the R. F. C., and the Peoria Railway Terminal Co.

"The above recital does not take into account the tremendous sums expended over the period on improvement of road and equipment, nor does it include the retirement of debt on jointly owned facilities such as the Joliet and Denver terminals."

As the Circuit Court of Appeals subsequently pointed out (R. 334, footnote 1), "no distinction was made between developments which took place prior to the approval of the plan by the Commission on May 1, 1944, or the District Court on June 15, 1945, and developments which took place after one or both of those dates."

We shall briefly take up, item by item, the alleged changes in conditions which are mentioned in the District Court's opinion and in the petitioners' briefs.

(1) The Basis for the Plan; Study of Earnings.

The first point made by the Court was that (R. 252):

> "In the present case we have a plan that except for slight modifications was prepared by the Commission in 1940 and rests on studies of earnings, etc., going back to 1937 and even beyond."

As to this statement:

First: The first plan certified by the Commission to the Court, which was approved by the Commission in

July, 1941, provided for no cash distribution whatever and for the issuance of $11,000,000 of new first mortgage bonds which would be sold to raise new money (242 I. C. C. 298, 478). Extraordinary war earnings intervened between July, 1941 and May 1, 1944, when the plan now under consideration was approved by the Commission (257 I. C. C. 307). The Commission in 1944 accordingly eliminated the provision for the raising of new money and provided for the distribution to the creditors of (1) $38,011,922 of cash and (2) an additional $12,409,600 of first mortgage bonds, a total of $50,421,522. These modifications were not "slight". In effect, war earnings in the amount of over $50,000,000 were applied to the claims of the creditors under the plan. Even with these additional allotments, there still remained an enormous deficiency in the claims of secured creditors which was given no recognition whatever in the plan.

Second: While the capital structure approved in the first plan, certified in July, 1941, was not greatly changed by the second plan approved in May, 1944, the Commission's refusal to change it was the result of an exercise of its best judgment that war earnings were not a proper basis on which to found a permanent capitalization.

When the case was remanded to the Commission in 1943 vigorous requests were made for an increase in the capitalization, both before the Commission issued its report of January 3, 1944 and in connection with the petitions for modifications of that report.

The Commission considered in both its Report of January 3, 1944 and its Report of May 1, 1944 demands for changes in the capital structure which are altogether similar to those now made by the petitioners.

Exercising its judgment that the economic conditions which made the war earnings possible were not of a permanent character, the Commission rejected the demands

for important changes in the capitalization. The Circuit Court of Appeals later quoted in its opinion from each of these two reports of the Commission (R. 341).

A similar exercise of judgment by the Commission was not merely approved, but endorsed, by this Court in *Group of Institutional Investors* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co.* (1943), 318 U. S. 523, 543-544.

The District Court's criticism that the capital structure rests on "studies of earnings, etc., going back to 1937 and even beyond" will not survive analysis (R. 252). The "studies of earnings, etc., going back to 1937 and even beyond" were made in order to try to forecast the "normal" income of the future. Certainly, studies of the past are useful in an attempt to forecast the future.

Third: There were no unanticipated, large earnings after approval of the plan, such as referred to by this Court in *Reconstruction Finance Corporation* v. *Denver & Rio Grande R. R. Co.* (1946), 328 U. S. 495, 533-535. On the contrary, the unexpectedly early end of the war resulted in an earlier decline of the Rock Island's extraordinary war earnings than was presumably anticipated when the plan was approved. From the year in which the Commission held its hearing on the plan to and including the year in which Judge Igoe refused to confirm it, the decline was steady and substantial, as shown by the table previously given:

Year	*Earnings Before Interest*
1943	37,037,708
1944	26,415,919
1945	20,444,571
1946	16,578,161

Fourth: As noted in Point II, even if there had been unanticipated large earnings, the plan would not have been unfair on that account. This subject was not discussed by Judge Igoe, although fully briefed before him.

(2) 1947 Earnings.

All of the petitioners refer to the fact that thus far the earnings in 1947 have been better than in 1946, and various forecasts or assertions are made about earnings for the entire year of 1947. In addition, comparisons are made between those earnings and the interest charges on the old securities, as, for example, in the tables at the end of the Debtor's petition.

As to these contentions:

There is no reliable forecast of the earnings for the year 1947. Furthermore, it is a matter of common knowledge that railroads like the Rock Island are being greatly helped in 1947 by extraordinary grain movements to Gulf and other ports, and no one can tell how long those movements will last.

Even more important, a comparison of current earnings with old fixed charges is meaningless in the case of the reorganization of a railroad like the Rock Island, for two reasons:

1. The comparison wholly ignores the vast amount of accrued and unpaid interest. As of the "effective date" of the plan, the accrued and unpaid interest aggregated $130,889,661. This figure is obtained by a calculation from the table appearing in the Interstate Commerce Commission report approving the modified plan (257 I. C. C., at p. 318), with adjustments on account of the subsequent sale of pledged bonds by the Banks and the payment of the R. F. C. loan. The cash distribution of $38,011,922 provided for in the plan (less the $3,732,172 allotted to the R. F. C.) may be treated as applicable in reduction of the accrued and unpaid interest, but this still leaves almost $100,000,000 of accrued and unpaid interest as of January 1, 1944. Since that so-called "effective" date of the plan interest has accrued in an amount larger than $38,011,922.

Under this Court's decisions proper provision must be

made in a plan for accrued and unpaid interest. If such interest is not paid, the claims for it must be represented by new securities to the extent that there are new securities available for that purpose. Those new securities have to be serviced; if they are bonds, interest must be paid, and if they are stock, there should be a prospect that dividends will be paid. A calculation such as that made by the Debtor, which simply disregards accrued and unpaid interest, is, therefore, quite meaningless in considering whether a particular plan or reorganization is "fair and equitable" or whether it is feasible to develop a better one.

2. The earnings available for interest of $16,578,161 in 1946 are calculated after deduction of Federal income taxes which have been arrived at by deducting the annual interest on the old bonds. But under the plan of reorganization the interest charges are reduced to less than half of the present charges, with creditors being allotted stock for a large portion of their claims. No one has disputed that there had to be a substantial reduction in interest charges in any reorganization. It follows that interest deductions for income tax purposes would be reduced under the reorganization plan, and that the Federal income tax liability would be substantially increased. Using present tax rates, there would be an increase of several million dollars in the income tax liability, and a corresponding reduction of several million dollars in the $16,578,161 of 1946 earnings.

Furthermore, the petitioners, in claiming that the 1946 earnings available for interest of $16,578,161 were unexpectedly large, not only ignore the fact that these are the lowest annual earnings since the 1943 earnings of $37,000,000, but also give no recognition to the fact that $16,500,000 of earnings are barely sufficient to service the new bonds and preferred stock issuable under the plan of reorganization and leave earnings of about $3.50 per share of new common stock. Earnings of that amount on the new common stock can hardly be considered as unexpectedly

large in relation to the new capitalization. If some earnings had not been expected for the new common stock being allotted to creditors for their claims, the Interstate Commerce Commission would hardly have included it in the new capitalization. In the light of these earnings, the new common stock is selling on a "when issued" basis at only about 28½.

(3) The Accumulation of Cash.

The next statement made in the Court's opinion is that (R. 252):

> "we find the Debtor today with cash, or equivalent of over $70,000,000."

As already noted, when the District Court remanded the original plan to the Commission in June, 1943, it expressly suggested that any cash available for that purpose be distributed to the creditors. When the hearings were held before the Commission in September, 1943, statements were submitted by the Trustees showing how much cash could safely be distributed as of the proposed "effective date", January 1, 1944, and the Commission modified the plan to provide therein for distribution of all such available cash ($38,000,000). One of the Trustees who filed the statement was Co-Trustee Colnon, who later made many wildly exaggerated assertions as to the amount of "available" cash in the estate.

The actual situation will be found by examining a statement showing the total amount of cash and cash equivalents and the "net cash"—the "available" cash—on June 1, 1946 (R. 238-239). That statement was prepared by the Trustees of the Debtor and introduced as an exhibit by the Trustee of the Convertible Bonds at the confirmation hearing on June 11, 1946 and showed the actual situation at the time when Judge Igoe refused to confirm the plan.

The statement shows that, while there were cash and cash equivalents on June 1, 1946, of $77,563,059, the "net

cash" — the "free" or "available" cash — was only $10,997,108.

The principal reasons for the difference are accounted for by the following items:

Accrued Taxes, Cash Reserve and Working Capital	$33,886,514
Requirements for Additions and Improvements	12,313,130
Plan Requirements (to service the new Bonds and Preferred Stock only)	19,166,786

Of the first item, liabilities for taxes totaled $21,423,000. The balance of the first item and the second item require no explanation. The third item can be explained briefly.

As already stated, the plan has a so-called "effective date" of January 1, 1944. This means that the new bonds and preferred stock (and common stock, if it is to have any value) will be entitled to interest and dividends from that date and that the sinking funds will operate from that date. The $19,166,786 represents the plan requirements from January 1, 1944 to June 1, 1946 for the new bonds and preferred stock only, omitting any provision for dividends on the new common stock. If such dividends at the rate of $3.50 per share per annum were added, it would more than use up the available cash of $10,997,108.

The $10,997,108 of net cash, if not used for dividends on the new common stock from January 1, 1944 to June 1, 1946, would have to be used for (1) additions and improvements, (2) debt retirement, or (3) for other corporate purposes. For the period since January 1, 1944, the creditors have received no interest whatever.* For

* The cash distribution of $38,011,922 is applicable under the plan in reduction of their claims as of January 1, 1944 (257 I. C. C. 307, 318). Between 1934 and 1945, the creditors received no interest, so that the payment of this cash distribution in 1945, if all applied to interest accrued to January 1, 1944, would still leave a balance of accrued and unpaid interest at January 1, 1944 of almost $100,000,000.

the period of two years and five months to June 1, 1946, they are entitled either (1) to receive interest on their bonds, which would amount to over $30,000,000 for two years and five months, or (2) to have the "net cash," which represents earnings accumulated since January 1, 1944, used for dividends on the new common stock or for one of the other purposes just mentioned and to obtain the benefit of either the distribution of dividends or the increase in the value of their equity (represented by the new common stock allotted to the creditors under the plan of reorganization) which would result from the making of additions and improvements, from debt retirement, or from the accumulation of the earnings for other corporate purposes.

The clear and fundamental error in the District Court's brief reference to this subject—an error which was aggravated by the Court's erroneous assumption that anything like $70,000,000 could be paid out for any purpose (R. 252-3)—was pointed out by this Court in *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western Railroad Company* (1946), 328 U. S. 495, 521:

> "The effective date of the plan was fixed by the Commission as January 1, 1943. This was in its power. The allocation of the securities took into consideration the interests of the secured claims to that date. Any gain or any loss after that time was a benefit or an injury to the new common stockholders and then sometimes to security holders in positions senior to them."

The right to any gain after the effective date of a plan necessarily carries with it the right to any cash which might be accumulated. On this subject this Court said (p. 518-519):

> "There is another important factor, corollary to stock ownership, to be noted in the Commission's allocation of these securities. This factor is that the

> creditors who received common stock to make them whole obtained with that common stock an interest in all cash on hand or all cash that might be accumulated. Of course, the Commission thoroughly understood this."

In the light of these factors this Court discussed the accumulation of cash in the *Denver* estate under the heading *"Cash and War Earnings"* (p. 520-524). In the interests of brevity we will not quote the entire discussion; the essence is in the concluding paragraph (p. 523-524):

> "The error of the Circuit Court in its holding set out above lies in its assumption that the senior bondholders were paid in full by the securities allotted to them without also accepting the determination of the Commission that the assets represented as of January 1, 1943, and all subsequent earnings were a part also of the common stock that was awarded the senior bondholders."

The cash situation in the present case was fully and accurately discussed in the opinion of the Circuit Court of Appeals (R. 336-337).

(4) Payment of the Claim of the R. F. C.

The District Court's opinion next says that (R. 252):

> "an R. F. C. loan aggregating, principal and interest, in excess of $18,000,000 (had been) paid in full".

The claim of the R. F. C. was paid May 15, 1945 before the District Court entered its order of June 14, 1945 approving the plan (R. 244; 67 F. Supp. 547). The payment consequently preceded, and it was discussed in, the opinion of the Circuit Court of Appeals affirming the approval of the plan (157 F. (2d) 241, 247 footnote 1). And by a still longer period it preceded this Court's

denials of certiorari to review the order of the Circuit Court of Appeals.

In the District Court's opinion approving the plan the District Court advanced sound reasons why the payment of the claim of the R. F. C. did not require the disapproval of the plan (67 F. Supp. 547, 553). Those reasons were substantially similar to the reasons which this Court later gave in its opinion in *Reconstruction Finance Corporation* v. *Denver & Rio Grande* (1946), 328 U. S. 495, 525, as to why a reduction of senior debt does not require a new plan:

> "When the reduction of senior capital takes place after the adoption of the plan by use of anticipated earnings or existing cash, there can be no such readjustments of junior participation because assets in the balance sheet at the adoption of the plan and subsequent earnings are, as we have pointed out, for the benefit of the stockholders in the new company so that through these common stock advantages these new stockholders may be compensated for their loss of payment in full in cash."

The payment of the claim of the R. F. C., like all other points mentioned by the District Court, was fully discussed in the opinion of the Circuit Court of Appeals (R. 337-338).

(5) Payment of the Peoria Terminal Company First Mortgage; Retirement of Part of the Choctaw & Memphis First Mortgage Bonds; and Retirement of the Joliet and Denver Terminal Bonds.

The District Court said that (R. 252):

> "the entire first mortgage of the Peoria Terminal Co. (has been) to all intents and purposes paid in full";

and that

> "over 20% of the Choctaw & Memphis first mortgage (have been) retired".

It also mentioned:

> "the retirement of debt on jointly owned facilities such as the Joliet and Denver Terminals".

The "entire first mortgage" of the Peoria Terminal Company is only $928,000; 20% of the Choctaw & Memphis First Mortgage Bonds would be $704,800 (257 I. C. C. 307, 318); and the cost of retiring the debt of the Joliet and Denver facilities is $824,000. The total of the three items is $2,456,800.

The amount is insignificant in relation to the deficiencies in the claims of those mortgage bond creditors whose claims will not be satisfied under the plan or in relation to the accruals of interest between January 1, 1944, and June 1, 1946, amounting to more than $30,000,000, which would have to be provided for if the plan were remanded to the Commission. The principle involved is exactly the same as that presented by the payment of the claim of the R. F. C.

These minor items of debt reduction were all discussed in the opinion of the Circuit Court of Appeals (R. 337-338).

(6) Reduction in Equipment Debt.

The Court next mentioned (R. 252):

> "an amazing reduction, in the interim, of equipment debt".

It did not say what the reduction was or what it meant by "the interim".

The facts with respect to the equipment debt illustrate how far Judge Igoe went in considering changes in conditions which took place *prior to the approval of the plan.*

On January 1, 1944 the equipment debt was $11,909,000 (257 I. C. C. 307, 318) and on April 30, 1946, the latest date shown in the record, it was $10,058,430 (R. 245). There is,

of course, nothing "amazing" about such a reduction.

Judge IGOE unquestionably referred to the very much larger reduction (from $26,571,639 to $10,058,430) which, as shown in one of the appellee's exhibits (R. 245), took place between December 31, 1939 and April 30, 1946, and most of which took place prior to the extensive discussions of the subject of the reduction of the equipment obligations in the Commission's reports of January 3, 1944 and May 1, 1944, in the District Court's opinion of June 15, 1945,* in the briefs on the appeals relating to the approval of the plan and in the opinion of May 23, 1946 of the Circuit Court of Appeals.

(7) Elimination of Classes of Creditors.

The Court next said (R. 252):

> "Three classes of creditors set up in the original Plan have disappeared—the banks, the R. F. C., and the Peoria Railway Terminal Co."

Obviously, it adds nothing to say that classes of creditors have disappeared if their claims have been paid.

The reason why the claims of the banks have disappeared is that the injunction against the sale of their collateral was lifted (R. 247-8) and the collateral (in substantially larger face amount than the amount of the bank loans) was sold, so that in their shoes there now stand the holders of the First and Refunding Mortgage Bonds and the St. Paul & Kansas City Short Line First Mortgage Bonds, who bought them from the banks. The transfer of these pledged bonds to the present public holders obviously affords no basis for more favorable treatment of the holders of the Convertible Bonds.

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* In this opinion of the District Court approving the present plan of reorganization, the Court had discussed at length the contentions of the petitioners with respect to the effect of the reduction of equipment trust obligations by $13,000,000 between January 1, 1942 and January 1, 1944, and ruled against those contentions.

(8) Expenditures for Improvements.

The Court next referred to (R. 252)

> "the tremendous sums expended over the period on improvement of road and equipment".

The Court did not say what the sums were or over what period they had been expended.

This is another subject specifically covered by this Court's opinion *in Reconstruction Finance Corporation* v. *Denver & Rio Grande Western Railroad Company* (1946), 328 U. S. 495, 514-515:

> "Earnings during the trusteeship were used to improve the debtor railroad. When the vote was taken in 1944, the real estate and equipment account showed charges of $43,291,513 during the trusteeship. An estimated ten million of it was between the Commission's approval of the plan, June, 1943, and the Commission's certification on July 15, 1944, to the court of the vote by claimants. See 254 Inters Com Rep (F) at 354 and 382 for explanation of new equipment program to meet the war situation. The retirements are said by the respondent trustee to have been about $13,000,000, leaving a net addition to capital account of $30,000,000. Respondents urge that since capitalization was not substantially increased by the Commission between 1938, when the first draft of a plan came from the Commission's staff, and 1943, the junior creditors got little or nothing for this investment. The improvements may have been wise or unwise. That question is not before us. Railroads even in reorganizations must make additions to take care of public needs or to lower operating costs. See 62 F Supp 389. The senior bond interest continued to accumulate during this period. As the capitalization was not increased pari passu with the purchases, the holders of junior securities received less participation. The Commission did not consider that the earning prospect justified a greater capitalization than the one

> given and we think its judgment controls the valuation."
>
> • • • •

It is fair to say, therefore, that under this Court's rulings in *Reconstruction Finance Corporation* v. *Denver & Rio Grande Railroad Co.* (1946), 328 U. S. 495, there was no evidence to support the failure to confirm the plan. On the contrary, every ground urged by any of the objectors to the plan or mentioned by Judge Igoe in his opinion was specifically and clearly covered by an explicit ruling in this Court's opinion in the *Denver & Rio Grande* case. Therefore the following statement by this Court in the *Denver* case is just as applicable in the present case (328 U. S. at p. 535):

> "If a plan gives fair and equitable treatment to dissenters, the elements which make the plan fair and equitable cannot be the basis for a reasonably justified rejection. If only those elements are relied upon, as here, the rejection is not reasonably justified."

It can also be said that every point was considered by the Circuit Court of Appeals in its opinion and disposed of in conformity with the rules so laid down by this Court (R. 332-333, 343).

IV.

THE PLAN IS NOT INEQUITABLE TO THE HOLDERS OF THE JUNIOR SECURITIES.

On the argument in *Insurance Group Committee* v. *Denver & R. G. W. R. Co.* (1947), 329 U. S. 811, tables of market prices of "when issued" securities were submitted to the Court to show that the market values of the securities distributable under the plan to the secured creditors were much less than the amounts of their claims.

A similar table was submitted in the present case on the argument of the appeals in the Circuit Court of Appeals on January 30, 1947, as follows:

"Table of Market Prices of 'When Issued' Securities Allotted Under the Plan to Secured Creditors.

Issue	Amt. of Claim Jan. 1, 1947*	Market Price of Allotment of 'When Issued' Securities Jan. 22, 1947**	Percentage of Claim Satisfied by Allotment†
Gen. Mtge. Bonds...	$1331	$923	69
First & Ref. Mtge. Bonds	1438	580	40
Sec. 4½% Bonds ...	1496	653	44
C. O. & G. Bonds ...	1509	906	60
St. P. & K. C. S. L. Bonds	1538	489	32
R. I. A. L. Bonds ...	1504	622	41
B. C. R. & N. Bonds	1631	397	24
L. R. & H. S. W. Bonds	504	364	72

*The amount of each claim as of January 1, 1947 is calculated from Exhibit A at the front of the Commission's submission pamphlet which is R-35 on appeals Nos. 9247, 9270, 9271, 9272. In each instance the cash distribution made in October 1945 has been treated as applied in reduction of accrued interest and interest from January 1, 1944 to January 1, 1947 has been added. In the case of the Little Rock & Hot Springs Western First Mortgage Bonds the principal amount of the claim has been treated as $397.90. (See Exhibit A, R-10, and also R-10, p. 259.)

**The allotments of new securities are set forth in Exhibit A at the front of the Commission's pamphlet referred to in the preceding footnote. The market prices are taken from the Wall Street Journal of January 23, 1947 and represent the average of the bid and asked prices. They are as follows:

First Mortgage Bonds	105
Income Bonds	85½
Preferred Stock	64½
Common Stock	28½

†The figures in this column somewhat overstate the extent to which the claims are to be paid on the basis of current 'when issued' prices. A purchaser of 'when issued' income bonds, preferred stock and common stock would not have to pay the seller for them until the plan was consummated and those securities were delivered to the purchaser; when the securities were delivered, the purchaser would receive interest on the income bonds from January 1, 1944 and dividends on the preferred stock from the same date and any dividends payable on the common stock; and the purchaser would not have to pay any interest on the purchase price of the securities from the date of the contract or purchase to the date of delivery. Since interest has been computed only to January 1, 1947 in the above table, the effect of the table is to omit any provision for interest from January 1, 1947 to the date of the consummation of the plan on so much of the claims as would be provided for in income bonds, preferred stock and common stock. A purchaser would have to pay interest on the new first mortgage bonds from January 1, 1944 to the date of delivery of the bonds."

The present "when issued" prices for the new securities (Wall Street Journal of August 5, 1947) are below those of January 23, 1947.

Testimony with respect to the probable maximum future prices of the securities allotted to the holders of the General Mortgage Bonds was given at the hearing before the Interstate Commerce Commission in September, 1943, with a view to establishing that the allotment was inadequate (257 I. C. C. 265, 278). No testimony has ever been given that there is any likelihood that the holders of those Bonds or of any other class of bonds will receive under the plan securities on which they can hope to realize in the foreseeable future an amount in excess of their claims. There were three opportunities to give such testimony: before the Interstate Commerce Commission, at the Court hearing on the approval of the plan, and at the hearing on the confirmation of the plan. No effort was made to show that the plan could actually operate to enrich the secured creditors.

V.

THE DISTRICT COURT DID NOT HAVE UNREVIEWABLE "DISCRETIONARY" POWER TO REFUSE TO CONFIRM THE PLAN.

The only distinction—not a real difference—between this case and *Reconstruction Finance Corporation* v. *Denver & Rio Grande Railroad Co.* (1946), 328 U. S. 495, is that the District Court confirmed the *Denver & Rio Grande* plan and was reversed by the Circuit Court of Appeals, whereas the District Court refused to confirm the Rock Island plan and was directed to do so by the Circuit Court of Appeals.

A principal argument in the Court below, and *the* principal argument made by the petitioners, is that under Sec-

tion 77(e) the District Court had what is called a "discretionary" power to confirm the plan or to remand it to the Interstate Commerce Commission.

A District Judge who administers a case has no personal prerogative to determine the fate of a plan of reorganization which the Commission has approved. Both the public and the security holders are entitled to a judicial decision on the law and the record. If the District Court's power may be said to be "discretionary" in any sense, it calls for the exercise of a "judicial" discretion circumscribed by the rules laid down by this Court in its opinion in the *Denver* case.

The petitioners attempt to discard this Court's interpretation of the pertinent provisions of subsection (e) of Section 77 and rely upon single words in the statute which reads:

> "Upon receipt of such certification, the judge shall confirm the plan if satisfied that it has been accepted by or on behalf of creditors of each class to which submission is required under this subsection. * * * *Provided,* That, if the plan has not been so accepted by the creditors and stockholders, the judge may nevertheless confirm the plan if he is satisfied and finds, after hearing, that it makes adequate provision for fair and equitable treatment for the interests or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting it and all the relevant facts; and that the plan, conforms to the requirements of clauses (1) to (3), inclusive, of the first paragraph of this subsection (3). * * * If the judge shall confirm the plan, he shall enter an order and file an opinion with a statement of his conclusions and his reasons therefor. If the judge shall not confirm the plan, he shall file an opinion, with a statement of his conclusions and his reasons therefor, and enter an order in which he shall either dismiss the proceedings, or, in his

> discretion and on the motion of any party in interest, refer the case back to the Commission for further proceedings including the consideration of modifications of the plan or the proposal new plans. In the event of such a reference back to the Commission, the proceedings with respect to any modified or new plan shall be governed by the provisions of this section in like manner as in an original proceeding hereunder."

Several of the petitioners emphasize that the proviso just quoted—to which they refer as the "cram-down" provision in the hope that that name will make it seem extraordinary and unpalatable—uses the word "satisfied." They argue that, since a District Judge must be "satisfied" in order to confirm a plan, he should refuse to confirm a plan if he has any doubt whatever on any issue before him. But the same word "satisfied" is used in the provision of subsection (e) pertaining to the initial approval of a plan by a Judge. This Court's opinions in the *Western Pacific* and *Milwaukee* cases establish that when a District Court is asked to approve a plan which has been approved by the Commission, it should give the benefit of any doubt to the Commission-approved plan. And the *Denver* opinion shows that the same rule applies when an application is made for confirmation.

Another word relied upon by the petitioners is "may", as contrasted with the word "shall" in the provision of subsection (e) relating to the approval of a plan. It is perfectly clear from this Court's decision in *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western Railroad Co.* (1946), 328 U. S. 495, that no significance can be attributed to the use of the word "may" rather than the word "shall". In the *Denver* opinion this Court laid down the rules which govern when an application for confirmation is made after the rejection of a plan by one or more classes of securityholders. If those rules govern, it makes no difference whether the statute uses the word

"may" or the word "shall" and it does not add anything to refer to the Court's power as "discretionary".

Certain of the petitioners imply that the sentence which prescribes when the Judge shall confirm a plan uses the word "discretion." It does not. The word "discretion" is used only in the sentence which says what a Judge may do *after* he has decided not to confirm a plan. There is thus no statutory provision that the Judge shall have "discretion" whether or not to confirm a plan. If anything, the use of the word "discretion" in the statutory provision relating to what shall be done *after* the Judge has decided not to confirm a plan would indicate that the Judge does not have a "discretion" whether to confirm a plan or not.

At any rate, application of the principles laid down by this Court in the *Denver* case to the facts in the record of the present proceeding demonstrates that the refusal to confirm was without warrant or rational basis and would therefore be an abuse of any discretion vested in the District Court.

The petitioners' principal reliance is on the circumstance that in the *Denver* case the District Court confirmed the plan and that in reinstating the District Court's decision this Court spoke of the "District Judge's familiarity with the reorganization." *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western Railroad Co.* (1946), 328 U. S. 495, 533.

Certainly if a District Judge decides the issues relating to either the approval or the confirmation of a plan of reorganization and it appears that his decision results from an application of the law to the facts in the record, any appellate court may be expected to consider his "familiarity with the reorganization" as a factor in determining whether or not to sustain his decision. "Familiarity with the reorganization" may be an important

aid in reaching a correct decision of the issues in a reorganization proceeding.

But the fundamental requirement is a realization that the issues in a reorganization should be decided in conformity with the law. If that fundamental requirement is lacking, "familiarity with the reorganization" means nothing. In the present case, the District Court did not even purport to apply the applicable principles of the *Denver* case to the facts before it, but proceeded in a manner directly inconsistent with those principles. Also, in the present case, no matter involving any particular "familiarity with the reorganization" was involved. The only issue before the District Court on the confirmation was whether there had been such a change of conditions since the approval of the plan that the plan which was "fair and equitable" when approved was no longer "fair and equitable." The facts were clear that there had been no such change of conditions in that period of one year and the District Court cited none.

The petitioners' arguments could not in any event survive an analysis of the provision of subsection (e) of Section 77 which reads:

> *"If the judge shall not confirm the plan, he shall file an opinion, with a statement of his conclusions and his reasons therefor,* and enter an order in which he shall either dismiss the proceedings, or, in his discretion and on the motion of any party in interest, refer the case back to the Commission for further proceedings, including the consideration of modifications of the plan or the proposal of new plans."

This provision does not call for mere findings such as the District Court incorporated in the order appealed from (R. 241-242). Findings of that character are referred to in the statute as "conclusions". The statute also calls

expressly for a statement of the District Court's "reasons" for his failure to confirm the plan.

Clearly one purpose of the requirement of subsection (e) of Section 77 that the District Court state its "reasons" for its decision was in order to permit an adequate review of the decision. This requirement of Section 77 for a statement of "reasons" for refusal to confirm, is not unique. Under subsection (e), if the judge "shall not approve the plan, he shall file an opinion, stating his conclusions and the reasons therefor". So also under the same subsection, if "the judge shall approve the plan, he shall file an opinion, stating his conclusions and the reasons therefor". One obvious purpose in each instance was to have adequate statements of the "reasons" for the Court's actions in order to permit a proper review.

It would be the height of absurdity to say that, when the statute requires a statement of "reasons" to support "conclusions," a statement of "reasons" which does not afford the slightest legal basis for the "conclusions" can sustain an order which purports to rest on such "conclusions."

VI.

THE CIRCUIT COURT OF APPEALS HAD JURISDICTION TO REVIEW THE DISTRICT COURT'S ORDER AND HAD POWER TO DIRECT THAT THE PLAN BE CONFIRMED.

The Preferred Stock Committee and Axelrod *et al.* contend that the Circuit Court of Appeals had no jurisdiction to review the District Court's refusal to confirm the Plan. The Debtor in its petition does not advance that contention.

Section 24(a) of the Bankruptcy Act (11 U. S. C., Sec. 47 (a)) expressly vested the Circuit Court of Appeals with appellate jurisdiction

> "in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise or reverse, both in matters of law and in matters of fact; * * *."

That statute, as the Circuit Court of Appeals necessarily held, gave it jurisdiction to hear the appeals from the order denying confirmation entered in a proceeding under Section 77 of the Bankruptcy Act.

However, the Preferred Stock Committee makes the contention (pp. 13-15) that Section 77(f) of the Bankruptcy Act evidences an intention that no appeal be allowed in Section 77 proceedings except from an order confirming a plan. Its argument is built on the provision of Section 77(f) that, upon confirmation, the plan shall be binding "subject to the right of judicial review." The claim is that the quoted words are a grant of a right to appeal from a confirmation order, and that such a grant would impliedly preclude appellate review of any other Section 77 order of the District Court. The argument is wholly fallacious.

In the first place, the express grant of appellate jurisdiction contained in Section 24(a) of the Bankruptcy Act could not be nullified in other provisons of the Bankruptcy Act except by language clearly inconsistent with Section 24(a). There is no inconsistency between Section 24(a) and the above quoted language in Section 77(f). Furthermore, Section 77(f) is not the grant of a right to appeal from confirmation, as the Preferred Stock Committee contends. The words "subject to the right of judicial review" would hardly be used as an affirmative grant of a right to appeal. These words are a mere statement of a condition as to the binding effect of an order of confirmation. This condition necessarily had to be inserted in the provision which makes the confirmation order as final and binding as possible. But the right of review referred to in the

condition is necessarily that granted by Section 24(a) relating to bankruptcy proceedings in general.

If the Preferred Stock Committee's contention were sound, then the Circuit Courts of Appeals would not have had jurisdiction in all the many cases in which they have reviewed Section 77 orders other than confirmation orders. In fact the Circuit Court of Appeals below would not have had jurisdiction of the appeals which the petitioners themselves took in 1946 from the District Court's order approving the reorganization plan.

Then the Preferred Stock Committee (p. 15) cites *Gilbert* v. *Securities and Exchange Commission*, 146 F. 2d 513 (C. C. A. 7, 1945) as inconsistent with the Circuit Court of Appeals having had jurisdiction in the present case. The *Gilbert* case is not in point. The appeal there was taken under the Public Utility Holding Company Act and not the Bankruptcy Act. The appeal was from an order of the Securities and Exchange Commission recommending a reorganization plan to the District Court. The Circuit Court of Appeals merely held that the District Court should first act on the recommended plan before the matter came to the Circuit Court of Appeals.

The Preferred Stock Committee also makes the rather frivolous contention that the rights of the appealing creditors were not affected by the order refusing to confirm and that they therefore had no right to appeal from the order denying confirmation. The lack of substance in that contention is demonstrated by the fact that this Court took jurisdiction in the *Denver and Rio Grande Western* case, 328 U. S. 495, of an appeal by creditors from a Circuit Court of Appeals order reversing an order of confirmation and remanding the proceeding to the Interstate Commerce Commission. On this point the Preferred Stock Committee (p. 21) cites *Knight* v. *Wertheim & Co.* (C. C. A. 2, 1946), 158 F. 2d 838. But that case did not involve the ques-

tion of a right to appeal. The question there was as to the effect of an alteration of a plan which would give creditors payment in cash in full. The Circuit Court of Appeals held that the creditors would not be adversely affected by such an alteration. Such a holding can have no possible bearing in the present situation.

Axelrod *et al.* also argues (p. 4) that review by the Circuit Court of Appeals was a denial of "due process," but such an argument needs no comment.

The contention is made by the Preferred Stock Committee and Axelrod *et al.* that even if the Circuit Court of Appeals had jurisdiction, it did not have power to direct the District Court to confirm. The contention has no substance. It is clear that on an appeal in bankruptcy the Circuit Court of Appeals has jurisdiction to determine the merits of the case.

Bankruptcy Act, Section 24(a), 11 U. S. C., Sec. 47(a);
Schieber v. *Hamre* (C. C. A. 8, 1926), 10 F. (2d) 119;
In re Marshall (C. C. A. 2, 1931), 47 F. (2d) 209;
In re Gustav Schaefer Co. (C. C. A. 6, 1939), 103 F. (2d) 237.

As already mentioned, Section 24(a) of the Bankruptcy Act gives the Appellate Court in bankruptcy proceedings the power "to review, affirm, revise or reverse, both in matters of law and in matters of fact".

In *In Re Gustav Schaefer Co., supra*, the Court said (p. 242):

> "Upon an appeal in equity or bankruptcy, the appellate court will dispose of the case if the entire record is before it. Elliott v. Toeppner, 187 U. S. 327, 333, 23 S. Ct. 133, 47 L. Ed. 200; Houghton v. Burden, 228 U. S. 161, 172, 33 S. Ct. 491, 57 L. Ed. 780; Courier-Journal Job-Printing Company v.

> Schaefer-Meyer Brewing Company, 6 Cir., 101 F. 699; Schieber v. Hamre, 8 Cir., 10 F. 2d 119. The record here is complete and we may make final disposition rather than remand for further hearing."

As already stated, the entire court day of January 30, 1947 was devoted to the argument of the two groups of Rock Island appeals heard that day. Much the greatest part of the day was devoted to the appeals relating to the confirmation of the plan. The opinion of the Circuit Court of Appeals is the best answer to any criticisms of the adequacy of that Court's consideration of the questions argued before it (R. 332-343).

VII.

PETITIONERS HAVE NO SUBSTANTIAL INTEREST IN THE CASE.

The Circuit Court of Appeals permitted all of the petitioners to file briefs and argue on both the appeals relating to the approval of the plan and the appeals relating to its confirmation. On the appeals relating to the approval, the Court said (157 F. (2d) 241, 245):

> "The debtor seeks nothing for itself. It is in the anomalous but commendable position of arguing for others. The debtor, appropriately, does not question the valuations of the Commission."

Similarly, in the two *Denver & Rio Grande* cases, this Court permitted the Debtor to be heard.

However, the Debtor is actually the spokesman for the stockholders and the Preferred Stock Committee is a spokesman for some of the stockholders. The approval of the plan by the District Court, the affirmance of that approval by the Circuit Court of Appeals, and this Court's denial of the petition for writs of certiorari establish that the stockholders have no right to participate in the plan and it was not submitted to them for acceptance or rejec-

tion. On the motion for confirmation, the only issue was whether the classes of creditors who had not voted to accept the plan were reasonably justified in failing to accept. In these circumstances, the confirmation proceedings did not affect the old stockholders, and neither the Debtor nor the Preferred Stock Committee had any standing to object to confirmation of the plan after its submission to creditors or to seek review in this Court of the order directing confirmation. In the *Denver* case, 328 U. S. at page 520, this Court ruled that a stockholder had no standing to object to a provision of the plan only affecting creditors since the stockholder was eliminated under the reorganization plan. This Court said (p. 520):

> "It would also follow that the objection of a stockholder, the Missouri Pacific Railroad Company, through its Trustee in reorganization, to a voting trust for future control of the debtor would be ineffective because this stockholder is eliminated from the reorganization by the valuation of the property and allocation of securities."

Gerald Axelrod *et al.* call themselves "The Convertible Bondholders Group." They say that they are the "sole spokesmen" for the $32,228,000 of Convertible Bonds (p. 2). They have no authority to speak except for the bonds which they own. They do not state how many they own. When last disclosed the amount was comparatively inconsequential. The Trustee named in the Indenture under which the Convertible Bonds were issued, The Chase National Bank of the City of New York, was represented at the hearing in the District Court, and its counsel argued on behalf of the Convertible Bonds Trustee in the Circuit Court of Appeals.

If the plan were unfair or inequitable, the circumstance that Gerald Axelrod, *et al.* own but a small fraction of the most junior bond issue of the Rock Island

System would not have any legal significance. *Case* v. *Los Angeles Lumber Products Co.* (1939), 308 U. S. 106, 114-115. However, this Court will not be unmindful that the very large number of bondholders who voted to accept the Commission's plan (94.89% to 98.17% of the secured creditors in each class who voted, except one very small mortgage bond issue which has not objected to confirmation) would be injured by any unnecessary delay in concluding a reorganization proceeding which has already been pending for over fourteen years.

CONCLUSION.

This Section 77 reorganization proceeding has been pending since 1933. In 1944 the Commission certified to the Court the present modified plan of reorganization which the District Court approved in 1945. The Circuit Court of Appeals affirmed such approval in 1946 and this Court denied petitions for certiorari.

Within a few weeks after the Circuit Court of Appeals affirmed the approval of the plan, the District Court in June, 1946, refused to confirm the plan although, in the year which had elapsed since the District Court's approval of the plan, there clearly had been no change of conditions calling for revision of the plan. The District Court's action accordingly was in conflict with the principles laid down in this Court's opinions in the *Denver & Rio Grande Western* case. The District Court's refusal to confirm was reviewable by the Circuit Court of Appeals under Section 24(a) of the Bankruptcy Act, which grants it complete appellate jurisdiction of bankruptcy proceedings and controversies, whether interlocutory or final. No question is presented by petitioners warranting review by this Court of the action of the Circuit Court of Appeals in applying, to the facts of the present case, the principles laid down by this Court in the *Denver & Rio Grande Western* case.

IT IS RESPECTFULLY SUBMITTED THAT THE PETITIONS FOR CERTIORARI SHOULD BE DENIED.

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